in the case under discussion the alleged injury to the child was indirect and negligent. Even so, it is undeniable that medical science is so far advanced that there are some such injuries which can be unerringly traced by experts into postnatal deformities.[22] In another decade who can say that there shall not be many? At least give the infant his place in court. "It is for [him] to make out his case. If he does so, there is no difficulty. If he does not, there is no liability." [23]

RECENT CASES

AGENCY — PRINCIPAL'S LIABILITY FOR ACTS OF INDEPENDENT CONTRACTOR — INHERENTLY DANGEROUS UNDERTAKINGS. — The defendant employed an independent contractor to erect a brick building abutting on a sidewalk. No barriers or guards were placed to keep the public away. Before the mortar in the front wall had hardened, the wall fell and injured the plaintiff, who was passing on the sidewalk. There was evidence that walls of the kind being built for the defendant are likely to fall before the mortar has dried. *Held*, that the defendant is liable. *Privitt* v. *Jewett*, 225 S. W. 127 (Mo. App.).

An employer is ordinarily not liable for the torts of an independent contractor. *Bailey* v. *Troy & Boston R. R. Co.* 57 Vt. 252. But there are exceptions to the rule; as where the thing contracted for is unlawful, or a nuisance. *Ellis* v. *Sheffield Gas Consumers Co.*, 2 E. & B. 767. Again, if the employer owes a duty to the plaintiff, he cannot escape responsibility by delegating its performance. A clear example is where the duty is imposed by statute. *Gray* v. *Pullen*, 5 B. & S. 970. But the duty may arise differently. Thus where the work to be done is "inherently" dangerous, where injury will probably follow unless precautions are taken, it is said that the employer has a non-delegable duty to see that such precautions are taken. *Bower* v. *Peate*, 1 Q. B. D. 321; *Penny* v. *Wimbledon Urban District Council*, [1899] 2 Q. B. 72; *The Snark*, [1899] P. 74; *Johnson* v. *J. I. Case Threshing Machine Co.*, 193 Mo. App. 198, 182 S. W. 1089. The principal case seems fairly within this exception. Decided cases vary greatly in result. See *Wiggin* v. *St. Louis*, 135 Mo. 558, 37 S. W. 528; *City of Moline* v. *McKinnie*, 30 Ill. App. 419. But this is to be expected; for it is apparent that the language of the courts allows wide discretion in particular cases, and makes for a fair decision of individual controversies, rather than for a certain rule of law.

ANIMALS — TRESPASS ON REALTY BY ANIMALS — TRESPASS BY CHICKENS. — Defendant's chickens trespassed on plaintiff's land and did substantial damage. There was no evidence of negligence on defendant's part. Plaintiff's land was enclosed by a lawful fence; the fencing statute, however, made no mention of fowls. *Held*, that the plaintiff can recover. *Adams Bros.* v. *Clark*, 224 S. W. 1046 (Ky.).

"*Ils ont fait tort quand les bestes vont oustre la terre.*" Y. B. 7 Hen. VII, Mich.

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[22] It may be asked why need the child be a separate entity from the mother at the moment injury occurs. Let us suppose a severe injury to the mother through the defendant's negligence before the child is conceived. As a result the mother's physical condition, generally or specially, is so permanently altered that the subsequently conceived child is born deformed. Obviously this child can have no right of action. The causation is both too intricate and too remote; the opportunity for intervening causes is medically immeasurable.

[23] See 1 BEVEN, NEGLIGENCE, 3 ed., 75.

pl. 1. The principal case is apparently the first recorded decision to apply this ancient common law doctrine, of absolute liability for trespass to land by domestic animals, to the case of domestic fowls. It has been generally assumed that they were within the rule. See *Cox* v. *Burbidge*, 13 C. B. (N. S.) 430, 438; *McPherson* v. *James*, 69 Ill. App. 337, 339. At least two courts have refused to sustain an action for trespass by fowls, but on the ground that the common law rule was not in force in their respective jurisdictions, by virtue of judicial decision or of statute. *Kimple* v. *Schaefer*, 161 Ia. 659, 143 N. W. 505; *Evans* v. *McLalin*, 189 Mo. App. 310, 175 S. W. 294. Where this abrogation of the common law rule has been effected by means of a fencing statute, the rule is held to remain in force as to classes of animals not mentioned in the statute. *Pacific Livestock Co.* v. *Murray*, 45 Ore. 103, 76 Pac. 1079. But see *Evans* v. *McLalin*, *supra*. And where the common law rule is in force, in whole or in part, there seems no objection on principle to the inclusion of domestic fowls within it, except the general custom in rural communities of allowing chickens to range at large. The public interest in the preservation of this custom may lead other courts to reach an opposite result.

BANKRUPTCY — VOIDABLE PREFERENCES — DEFINITION OF A PREFERENCE. — At a time when all the parties knew that the bankrupt was insolvent, but believed it probable that he might later become solvent, the bankrupt transferred property to prior creditors by way of security. This occurred within four months prior to the filing of the petition in bankruptcy. The trustee sought to set aside the transfer as a voidable preference under Section 60 b, of the Bankruptcy Act. *Held*, that the transfer cannot be set aside. *Kennard* v. *Behrer*, 46 A. B. R. 70 (U. S. D. C., N. Y.).

For a discussion of the principles involved in this case see NOTES, p. 547.

BILLS AND NOTES — CHECKS — ACCEPTANCE BY TELEGRAPH. — X had a check drawn on the defendant bank which the plaintiff bank refused to cash. He received a telegram from defendant stating, "We will protect this check," and in other ways definitely identifying it. On the faith thereof, plaintiff cashed the check. Plaintiff now seeks to hold defendant on this alleged acceptance by telegraph. *Held*, that the defendant is liable. *Commercial Bank of Woodville* v. *First National Bank of Morgan City*, 86 So. 342 (La.).

A check is defined as a bill of exchange payable on demand. See N. I. L., § 185. At common law an oral acceptance of an existing bill was valid. *Lumley* v. *Palmer*, 2 Stra. 1000; *Pierce* v. *Kittredge*, 115 Mass. 374. But this anomaly was abolished by the Negotiable Instruments Law which provides that an acceptance must be in writing, signed by the acceptor. See N. I. L., § 132. In the United States the acceptance need not be on the face of the bill but may be evidenced by an extrinsic writing. See N. I. L., § 134; *Coolidge* v. *Payson*, 2 Wheat. 66. In England, however, the acceptance must appear on the bill. See BILLS OF EXCHANGE ACT, § 17 (1), (2). Acceptances by telegraph have almost uniformly been held valid under the American statute. *In re Armstrong*, 41 Fed. 381; *Selma Savings Bank* v. *Webster County Bank*, 182 Ky. 604, 206 S. W. 870; *Iowa State Savings Bank* v. *City National Bank*, 183 Iowa 1347, 168 N. W. 148. For the purposes of the Statute of Frauds a telegram is as much a writing as is a letter. *Ryan* v. *United States*, 136 U. S. 68; see *Howley* v. *Whipple*, 48 N. H. 487, 488. The signature need not be in the handwriting of the acceptor; one which he authorizes or adopts is sufficient. *Herrick* v. *Morrill*, 37 Minn. 250, 33 N. W. 849. Words such as were used in the principal case would seem sufficiently to evidence a contract of acceptance. See *First National Bank* v. *First National Bank*, 210 Fed. 542. Consequently, if the bill is properly identified, an acceptance by telegraph seems entirely unobjectionable and in accord with the best interests of the business world.